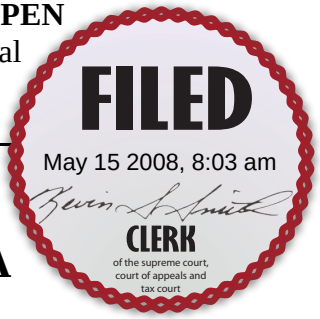
ATTORNEY FOR APPELLANT:

STEVEN J. HALBERT
Carmel, Indiana

ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General of Indiana

MELLISICA K. FLIPPEN
Deputy Attorney General
Indianapolis, Indiana



IN THE COURT OF APPEALS OF INDIANA

PHILLIP BRANDON,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-0709-CR-779
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Grant Hawkins, Judge
Cause No. 49G05-0702-FB-32837

May 15, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

After pleading guilty pursuant to a plea agreement to aggravated battery as a Class B felony and to being a habitual offender, the trial court sentenced Phillip Brandon to a term of forty years. On appeal, he contends that his sentence is inappropriate in light of the nature of the offense and his character. Finding that his forty-year sentence is not inappropriate, we affirm.

Facts and Procedural History[1]

On February 22, 2007, Brandon and Robert Hughes were in an Indianapolis, Indiana, apartment with several other people. The two men argued, and Brandon walked over to the chair where Hughes was sitting and stabbed him several times in the back, chest, and abdomen. These stab wounds punctured Hughes's pericardial sack, diaphragm, and bowels. Hughes underwent surgery and survived.

The State charged Brandon with Count I: aggravated battery, a Class B felony,[2] and Count II: battery as a Class C felony.[3] The State later filed an information seeking to have Brandon sentenced as a habitual offender.[4] Brandon ultimately pled guilty pursuant to a plea agreement to aggravated battery and to being a habitual offender. Appellant's App. p. 52-57. In exchange for his guilty plea, the State dismissed the charge under Count II. The plea agreement left Brandon's potential sentence "[o]pen, with a cap of 40

[1] We have supplemented the facts provided as a factual basis during Brandon's guilty plea hearing with information contained in the probable cause affidavit, to which Brandon cites in his brief.

[2] Ind. Code § 35-42-2-1.5.

[3] Ind. Code § 35-42-2-1(a)(3).

[4] Ind. Code § 35-50-2-8.

years on the entire sentence." *Id.* at 53. After a sentencing hearing, the trial court sentenced Brandon to twenty years for aggravated battery, enhanced by twenty years for being a habitual offender. *Id.* at 14. Brandon now appeals his sentence.

Discussion and Decision

Brandon's sole argument on appeal is that his forty-year sentence is inappropriate. Even where a trial court has not abused its discretion in imposing a sentence, the Indiana Constitution authorizes us to conduct independent appellate review and sentence revision, pursuant to the paradigm set forth by Indiana Appellate Rule 7(B). *Anglemyer v. State*, 868 N.E.2d 482, 491 (Ind. 2007), *clarified on reh'g*, 875 N.E.2d 218 (Ind. 2007). Indiana Appellate Rule 7(B) provides: "The Court may revise a sentence authorized by statute if, after due consideration of the trial court's decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender." The burden rests with the defendant to persuade us that his or her sentence is inappropriate. *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006). After due consideration of the trial court's decision, we cannot say that Brandon's sentence is inappropriate.

As an initial matter, we note that if the plea agreement had not capped Brandon's sentence at forty years, he would have faced up to fifty years for this offense. Ind. Code §§ 35-50-2-5; 35-50-2-8(h). As such, although he received the maximum sentence permissible under his plea agreement, Appellant's App. p. 53, he did not receive the maximum sentence allowable under law for his offense.

As for the nature of the offense, Brandon stabbed a defenseless victim multiple times. The stabs, which were in Hughes's chest, back, and abdomen, punctured Hughes's

pericardial sack, diaphragm, and bowels. Tr. p. 13. As such, Hughes suffered very serious injuries that could have killed him. *See id.* (Brandon admitted to the factual basis for this conviction, which provided that Hughes's "wounds created a substantial risk of death."). Nothing about the nature of this offense leads us to conclude that Brandon's twenty-year sentence, enhanced by twenty years for being a habitual offender, is inappropriate.

As for Brandon's character, it, too, does not warrant a reduced sentence. Although he attempts to liken his case to *Hollin v. State*, 877 N.E.2d 462 (Ind. 2007), in which our Supreme Court found a defendant's forty-year sentence inappropriate and revised his sentence to twenty years, *Hollin* does not bring him relief. *Hollin* involved an eighteen-year-old defendant with a history of nonviolent juvenile offenses who, while unarmed, burglarized an empty home. Our Supreme Court, while "not condon[ing] Hollin's past or current violations of the law," concluded that his past did not "demonstrate a character of such recalcitrance or depravity" to justify a forty-year sentence. *Id.* at 465-66 (quoting *Frye v. State*, 837 N.E.2d 1012, 1015 (Ind. 2005), *reh'g denied*). In contrast, Brandon has revealed his disdain for the law over the course of more than forty years by amassing a significant criminal history that began when he was a teenager. In 1967, for a homicide committed in 1965, Brandon was convicted of second degree murder and sentenced to life in prison. He remained incarcerated on that offense until 1992, when he was released on parole. Just over three years later, in 1995, Brandon was convicted of Class D felony residential entry and received a suspended sentence. In 1996, Brandon was convicted of Class C felony burglary, for which he initially served three years and then received

probation. However, after less than a year on probation, Brandon's probation was revoked for, among other things, testing positive for cocaine use. In 2002, Brandon was again convicted of criminal activity, this time Class A misdemeanor criminal trespass. While on supervised probation for that conviction, Brandon tested positive for cocaine and marijuana, and his probation was revoked. In addition to these convictions, Brandon has been charged with a slew of other crimes allegedly committed during brief stints of freedom in an otherwise-incarcerated adult life. *See Cotto v. State*, 829 N.E.2d 520, 526 (Ind. 2005) ("[A] record of arrest, particularly a lengthy one, may reveal that a defendant has not been deterred even after having been subject to the police authority of the State. Such information may be relevant to the trial court's assessment of the defendant's character in terms of the risk that he will commit another crime."). Most telling about this criminal history is that Brandon has already killed a person and served a lengthy sentence for that crime. Instead of being deterred from such violence, he attacked and nearly killed yet another victim. Nothing about Brandon's character renders his sentence inappropriate.

Affirmed.

MAY, J., and MATHIAS, J., concur.